IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-10-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.2653 of 2002
W.A.M.P.No.4487 of 2002

M/s.Craigmore Plantations (India) Pvt. Ltd.,
Craigmore Group,
Kullakamby,
Nilgiris,
rep.by its Company Secretary,
R. Sundaresan ... Appellant

Vs.

1. The Assistant Executive Engineer,
Agrigultural Engineering (SC),
Kundah River Valley Project,
Coonoor.

2. The Tahsildar,
Coonoor,
Nilgiris.

3. State of Tamil Nadu,
rep.by the Secretary to Government,
Food & Agriculture Department,
Chennai - 600 009. ... Respondents

This Writ Appeal is filed under Clause 15 of the Letters Patent against the order of the learned single Judge in W.P.No.1093 of 1996 dated 5.4.2002.petitioner under Article 226 of constitution of India praying to issue a writ of certiorari calling for the records of the 2nd respondent in proceedings in Ref.Rc.Pdl.No.667/95 dated 27.10.1995 and quash the same in so far as it makes a demand for Rs.4,77,998.60 towards the charges for soil conservation work allegedly done in the petitioner's estate.

For Appellant : Mr.K.Sridhar
For Respondents : Mr.D.Srinivasan,
Addl. Government Pleader

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order of the learned single Judge made in W.P.No.1093 of 1996 dated 5.4.2002, dismissing the writ petition filed by the appellant.

2. The brief facts necessary for disposal of the writ appeal are that the appellant Company is engaged in Tea Plantation, registered under the Company's Act, and it is having lands in Melur and Adigaratty Villages in Nilgiris District. The State Government enacted the Tamil Nadu Land Improvement Scheme Act, 1959, for conservation and improvement of soil and water resources, prevention or mitigation of soil erosion, protection of land against damage by floods or drought, protection of reservoirs against sedimentation and reclamation of waste lands. Under section 3 of the Act, the State Government may, by notification declared the area to be a notified area for the purpose of the Act. The lands owned by the appellant Company are not notified under section 3 of the Act and according to the appellant, only in the notified area, if the Government carried out any work to prevent soil erosion, the cost of such work shall be recovered in whole or in part from the owners of the lands, included in the scheme. It is the further case of the petitioner that on 15.2.1994, a notice was issued by the respondents calling upon the petitioner to pay a sum of Rs.30,382/- and Rs.61,481.70 respectively for the said soil conservation loan paid by the Government. Petitioner sent a reply to the said demand on 1.3.1994 and stated that they were under the impression that the amounts spent by the Government would be treated as subsidy and the details as to how the said amount was arrived at was also sought for. The second respondent sent a reply on 27.4.1994 stating that the amount is Rs.41,582/- as the demand is for six years. Thereafter by letter dated 21.2.1995 a sum of Rs.1,278/- and Rs.2,086/- were demanded, for which also the appellant sent a reply on 23.3.1995 and requested to furnish complete details. However, on 25.10.1995 the respondents demanded a sum of Rs.4,77,998.60 with certain details. The said demand dated 25.10.1995 was challenged in W.P.No.1093 of 1996 before this Court by contending that the Government having not notified the area, it has no jurisdiction to make such a demand.

3. The respondents filed counter affidavit contending that various Soil Conservation Schemes are executed under the River Valley Project, following the procedures formulated by the Agricultural Engineering Department. The area of operation are also mentioned in the Government Order and works are carried out on priority basis. The land owners of that area were informed of the procedures in implementing the scheme and due to the importance and benefits of the scheme land owners agreed to give their lands through the agency nominated by the department. On completion of the works to the satisfaction of the land owners, they sign in the work acceptance statement. The said procedures are followed in the

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Agricultural Engineering Department while implementing the Soil Conservation scheme. It is further stated that the work was not done under the Tamil Nadu Land Improvement Scheme Act, 1959, but on mutual discussions with the farmers on obtaining consent from them. The first respondent as an Agency for executing Soil Conservation works and with consent of the land owners the work was carried out, for which the Tahsildar issued demand notice. It is further stated in the counter affidavit that insofar as the appellant Company also, after obtaining consent only the Soil Conservation work was carried on. Pointing out all these factual aspects, the respondents pray for dismissal of the writ petition.

4. The learned single Judge taking note of the consent given by the appellant and the admission of the appellant that the soil conservation works were carried out and the appellant having sought details for arriving at the amount and the same having been furnished and in view of the fact that the writ petition involved only questions of fact and having noticed that the Company deliberately or otherwise not filed the reply dated 27.11.1995 before this Court in which the Government gave explanation for the demand, held that there is no merit and dismissed the writ petition with cost of Rs.5,000/-, treating it as a frivolous writ petition. As against the dismissal of the writ petition, this writ appeal is filed.

5. The learned counsel for the appellant Cpmpany submitted that the Act viz., the Tamil Nadu Land Improvement Scheme Act, 1959, having not made applicable, the respondents have no jurisdiction to demand any expenditure made to preserve soil erosion. The learned counsel also argued that there was no agreement to pay the dues and therefore the appellant was not obliged to pay as per the impugned demand. The learned counsel further submitted that the demand was made as a recurring expenditure and therefore the action of the respondents are not authorised under any Act.

6. The learned Additional Government Pleader appearing for the respondents on the other hand submitted that the appellant has given consent to execute the work of Soil Conservation in its lands and periodically the appellant or their agents verified and signed the work done statement following the consent given to execute the work and the said facts were suppressed by the appellant in the affidavit filed in support of the writ petition and the plea raised was that the details of the amount arrived at was not given and the liability to pay the amount for the executed work was not disputed and therefore the learned single Judge was right in dismissing the writ petition.

7. We have considered the rival submissions made by the learned counsel for the appellant as well as the learned Additional Government Pleader for the respondents.

8. The Government issued G.O.Ms.No.1899 Agricultural Department, dated 28.9.1976, wherein it is stated that a centrally sponsored scheme

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for soil conservation in the catchment of River Valley Project is to be implemented by the Forest Department in the state of Tamil Nadu. The Chief Conservator of Forest proposed that execution of the Scheme may be entrusted to the Agricultural Department. A total cost of Rs.17,00,000/- of the project was sanctioned for the execution of the works with one project office in co-ordination of two sub-divisions and the scheme was eligible for 50% of grant and 50% as loan from the Government of India. The Central Government indicated that the tentative outline for the programme as Rs.17,00,000/- and sent the same to the Government of Tamil Nadu for its approval, which was approved by the Government and thereafter the said amount was sanctioned for the execution of Soil Conservation work in the catchment of Kundah and Lower Bhavani during 1976-1977, pursuant to which the Soil Conservation work was executed with the consent of the land owners. A specific averment is made in the counter affidavit stating that after mutual discussion with the farmers and on obtaining their consent, the work was executed by the Department and demand was made to repay the loan paid by the Central Government as stated supra. It is also the stand of the respondents that the appellant company has not denied anywhere that the work has not been executed. From the perusal of the documents filed by the appellant Company itself we could see that the details sought for was the basis to arrive at the amount demanded and the same was furnished as requested by the petitioner on 26.4.1994 and the amount due from 1984-85 to 1992-93 both principal and interest are calculated. The work executed viz., constructed wall in various survey numbers are also stated in the reply dated 27.4.1994. The contention of the appellant that the Company is not liable to pay any amount due to the non-issuance of the notification under the Act cannot be accepted as admittedly the respondents are not demanding any amount in exercise of powers under the said Act. The impugned demand is made as per the consent given by the appellant to execute the soil erosion work in their tea estate and the periodical execution of the work is also acknowledged by the appellant.

9. The consent given by the appellant to execute the work as stated in the counter affidavit is not denied by the appellant by filing any reply affidavit. Even assuming that the appellant is disputing the same, the same being pure question of fact, cannot be agitated in the writ petition filed under Article 226 of Constitution of India. In the decision reported in (2007) 7 MLJ 687 (Food Corporation of India v. Harmesh Chand), the Supreme Court held that disputed questions of fact having been raised, no factual finding could be recorded without consideration of the evidence adduced by the parties and the High Court ought not to have exercised its jurisdiction when the facts are in dispute. The learned single Judge rightly held that the appellant is not entitled to get any relief and dismissed the writ petition with costs. We see no ground to interfere in the said finding given by the learned single Judge.

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There is no merit in the writ appeal and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Executive Engineer,
   Agrigultural Engineering (SC),
   Kundah River Valley Project, Coonoor.

2. The Tahsildar,
   Coonoor, Nilgiris.

3. The Secretary to Government,
   Food & Agriculture Department,
   Chennai - 600 009.

+ 1 cc to Mr.K.Sridhar Advocate SR.NO.63135
+ 1 cc to Govt.pleader SR.NO.63262

SSK(CO)
RD 17.10.07

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